

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

SAFE ENVIRONMENT, INC.,)	
)	
Appellant,)	PCHB No. 90-194
)	
v.)	
)	FINAL FINDINGS OF FACT,
PUGET SOUND AIR POLLUTION)	CONCLUSIONS OF LAW
CONTROL AGENCY,)	AND ORDER REVISED
)	
Respondent.)	

This matter came for hearing before the Pollution Control Hearings Board at 11:00 a.m. on Thursday, February 21, 1991, in Lacey, Washington. Safe Environment, Inc. (SEI) had appealed the Puget Sound Air Pollution Control Agency's (PSAPCA) issuance of Notice and Order of Civil Penalty No. 7197 for \$1,000, relating to asbestos removal in Edmonds, Snohomish County, Washington.

After a preliminary ruling denying a motion to dismiss, Member Harold S. Zimmerman presided. Members Judith A. Bendor, chair, and Annette S. McGee have reviewed the record. James Walsh, Vice President of Safe Environment, Inc., represented appellants. Joseph J. Eng, Supervisor II with the Puget Sound Air Pollution Control Agency, represented respondent Agency until the arrival of counsel Keith McGoffin. The proceeding was recorded by Robert H. Lewis & Associates, of Tacoma, Washington.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Argument was made. From the testimony and argument heard,
3 and exhibits examined, the Pollution Control Hearings Board issued a
4 final decision on April 5, 1991, holding that Safe Environment did the
5 violations alleged. The Board reduced the \$1,000 penalty to \$500, of
6 which \$250 was due with \$250 suspended provided there are no air
7 pollution violations for three years.

8 On April 15 appellant Safe Environment, Inc. filed a Motion for
9 Reconsideration. On April 25, 1991 respondent filed its Answer in
10 opposition. On April 30, 1991, appellant filed a rebuttal.

11 Having reviewed the foregoing, the Board issues these:

12 REVISED FINDINGS OF FACT

13 On April 13, 1990, Safe Environment, Inc. (SEI) filed with PSAPCA
14 a Notice of Intent to Remove Asbestos for a demolition project at a
15 single family residence at 7505 219th S.W. in Edmonds. In the Notice
16 SEI listed itself as the asbestos contractor, Malcolm Pullen as the
17 owner/ceo. SEI estimated the removal would be for 1,080 square feet
18 of cement asbestos board and paid a fee. The Notice listed Briar
19 Development, Dave Emerson as the owner of the property. The
20 completion date was listed as April 27, 1990.

21 II

22 After receiving Notices of Intent, PSAPCA routinely conducts
23 inspections. In this case, on Thursday, April 26, 1990, Richard J.
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1 Grenier, air pollution inspector for PSAPCA, made such an inspection.
2 Work was in progress, but no one was at the site. There were tools
3 and ladders there, and a water hose leading to the house from another
4 house across the street.

5 III

6 The following Monday, April 30, 1990 at 7:30 am, inspector
7 Grenier returned to the site for a follow-up inspection. The tools,
8 ladders and the water hose were gone. Alongside the house the
9 inspector found pieces of broken dry cement asbestos board ("CAB") on
10 the ground, approximately 4-inches square in total. A sample was
11 taken, labeled, and a chain of custody prepared.

12 The inspector called SEI and spoke with Mr. Pullen, informing him
13 of the likely violation. Mr. Pullen offered to have the site further
14 cleaned, but Mr. Grenier informed him that it would not be necessary.

15 IV

16 Subsequent laboratory analysis showed the sample contained
17 asbestos: 25% chrysotile and 15% amosite. As a result, PSAPCA sent
18 Notice of Violation No. 10-000162 to SEI and to Dave Emerson dba Briar
19 Development. The Notice listed violation of WAC 173-400-075 and of
20 PSAPCA Regulation I, Article 10, Sections 10.04(b)(2)(iii) A, B, and
21 C, in the handling of asbestos during removal or encapsulation.
22 These sections deal with the failure: to adequately wet asbestos
23 material to ensure it remains wet until collected for disposal, to
24

1 collect all the asbestos for disposal at the end of the day, and to
2 contain it in a controlled area until transported to a waste disposal
3 site. (For exact language, see Conclusion of Law IV, below.)

4 V

5 PSAPCA issued Notice and Order of Civil Penalty No. 7197 for
6 \$1,000 on June 11, 1990 to both SEI and to Dave Emerson (dba Briar
7 Development), reciting the same violations. The owner of the property
8 did not appeal the civil penalty to this Board and did not participate
9 in the hearing.

10 VI

11 The prime contractor on this demolition project was Guarino
12 Excavating, Inc., of Preston, Washington. They contacted SEI to do
13 the asbestos removal prior to demolition for this house and several
14 others.

15 SEI has been involved with 15 to 20 CAB projects.

16 VII

17 Prior to providing an estimate, SEI visited the house and some
18 others. When visited on March 29, 1990, the house was in a state of
19 disrepair. Windows and doors had been removed and asbestos siding was
20 scattered around. The house appeared to have been vandalized. When
21 SEI arrived on-site for the job, April 26, 1990, additional damage
22 appeared to have occurred.

23 VIII

24 SEI did the asbestos removal in one day with three SEI workers.
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1 The CAB shingles were not nailed down, which is atypical. Removing
2 them from the sides of the house involved sliding them out. The
3 shingles were stacked, bagged, and loaded on a truck for transport.
4 The material was eventually disposed of at Cathcart Landfill.

5 That day, both before and after removal, SEI patrolled the
6 grounds collecting pieces of CAB and bagging them. SEI conceded that
7 it "overlooked" the pieces the inspector subsequently found.

8 At the hearing, SEI asserted that the CAB pieces found had been
9 stripped or removed from the house by others.

10 IX

11 Any Conclusion of Law deemed to be a Finding of Fact is hereby
12 adopted as such.

13 From these Findings of Fact, the Board makes these:

14 REVISED CONCLUSIONS OF LAW

15 I

16 The Pollution Control Hearings Board has jurisdiction over the
17 parties and the subject of this appeal. Chaps 70.94 and 43.21B RCW,
18 and Chapt. 173-400 WAC. We take judicial notice of PSAPCA Regulation
19 I.

20 II

21 In a five county area, including Snohomish County, PSAPCA has
22 been designated as the regional agency to enforce the state air
23 pollution laws and regulations as they pertain to asbestos removal.
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1 Under Chapt. 70.94 RCW, civil penalties can be assessed for up to
2 \$1,000 per day for each violation.

3 III

4 The purpose of the Agency's asbestos regulation is clearly stated:

5 SECTION 10.01 PURPOSE

6 The Board of Directors of the Puget Sound Air
7 Pollution Control Agency recognizes that asbestos is
8 a serious health hazard. Any asbestos fibers
9 released into the air can be inhaled and can cause
10 lung cancer, pleural mesothelioma, peritoneal
11 mesothelioma or asbestosis. The Board has,
12 therefore, determined that any asbestos emitted to
the ambient air is air pollution. Because of the
seriousness of the health hazard, the Board of
Directors has adopted this regulation to control
asbestos emissions from asbestos removal and
encapsulation projects in order to protect the public
health . . .

13 IV

14 The Notice of Violation and Notice and Order of Civil Penalty in
15 this matter cite violations of Section 10.04(b)(2)(iii)(A), (B) and
16 (C) of PSAPCA's Regulation I. The regulation provides in pertinent
17 part, (emphasis added):
18

19 10.04(b) It shall be unlawful for any person to cause
20 or allow the removal or encapsulation of
asbestos material or to work on an asbestos
project unless:

21 (2) The following procedures are employed:

22 [...]

1 (iii) Asbestos materials that have been
2 removed or stripped shall be:
3 (A) Adequately wetted to ensure that
4 they remain wet until they are collected for
5 disposal; and
6 (B) Collected for disposal at the end
7 of each working day; and
8 (C) Contained in a controlled area at
9 all times until transported to a waste
10 disposal site.

11
12 V

13 Safe Environment, Inc., was the asbestos contractor for this
14 asbestos demolition project. In their "work on an asbestos project"
15 for which they filed a Notice of Intent and paid a fee, they left
16 behind asbestos material that was not wet when PSAPCA discovered it,
17 nor had it been collected or contained in a control area. We conclude
18 SEI violated Sections 10.04(b)(2)(iii)(A) and (B) and (C) when they
19 concluded the job and left asbestos material on the ground in the
20 condition it was subsequently discovered. Savage Enterprises v.
21 PSAPCA, PCHB No. 87-176.

22 Appellant asserts it was not legally responsible for the
23 violation, asserting that the pieces found had not been stripped or
24 removed from the building by them, and the company did not have the
25 responsibility to clean up asbestos that others had removed from the
26 building. This argument is without merit. As we have concluded in

1 the Savage case:

2 [the] announced intention was to remove asbestos
3 before demolition of the building. [...] While
4 the introductory words to Section 10.04(b)2)(iii)
5 speak to 'asbestos materials that have been
6 removed or stripped,' we believe it an appropriate
7 gloss on the regulations, under the instant facts,
8 to apply them to materials missed in the removal
9 and stripping process. Otherwise the purpose of
10 preventing the release of asbestos fibers during
11 demolition might be frustrated without regulatory
12 sanction. Savage, supra, at Conclusion of Law
13 VII.

14 That conclusion is equally appropriate under the facts of this
15 case. To do otherwise would be to frustrate the basic purposes of the
16 asbestos regulations.

17 The clear language of Regulation I at Section 10.04(b) states
18 that it is unlawful for any person to work on an asbestos project
19 unless asbestos materials that have been removed or stripped are
20 adequately wetted, collected and contained. The Regulation covers
21 demolition project for which SEI filed the Notice of Intent. It is
22 undisputed that Safe Environment worked on this removal project. The
23 company was hired to remove asbestos for a demolition project. The
24 site was under its control during the asbestos removal work. As the
25 contractor that did the work, SEI had the legal responsibility to wet,
26 collect and contain the asbestos material at that site listed on the
27 Notice of Intent, regardless of who may initially have caused a piece
of asbestos to lie at a particular spot. Savage, supra.

Moreover, appellant's approach would create an evidentiary maze directly counter to the law and the regulations' prophylactic goal, to promote diligent asbestos work prior to demolition that does not leave dry asbestos laying around.

Appellant's interpretation would also necessitate the filing of two notices of Intent, with two fees, one by the owner who plans to demolish, and one by the asbestos removal contractor. This makes little sense.

VI

SEI was behaving responsibly, attempting to comply with the law, when it patrolled the site looking for loose asbestos. It was not, however, as the company claimed at the hearing, behaving like a "good samaritan".

Fines are applied not as punishment, but are issued to encourage compliance. Appellant SEI properly notified PSAPCA of the project. The Company was quite diligent in its efforts to clean up the site. Only four square inches of asbestos were found, a small amount. Prior to the issuance of the Notice of Violation, it offered to return to the site and clean it up.

We conclude that as to Safe Environment, Inc., the only party contesting the fine to this Board, the fine should be reduced to \$500, with \$250 of that suspended on condition there are no air pollution violations for three years from the date of this decision.

VII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters the following:

ORDER

The Motion to Reconsider is DENIED.

The Notice and Order of Civil Penalty No. 7197 is AFFIRMED as to liability, with the penalty reduced to \$500 of which \$250 is suspended on condition there are no air pollution violations for three years.

DONE this 1st day of May, 1991.

POLLUTION CONTROL HEARINGS BOARD


HAROLD S. ZIMMERMAN, Presiding


JUDITH A. BENDOR, Chair


ANNETTE S. MCGEE, Member

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